

**BEFORE THE
BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Petition for Reinstatement By:

MICHAEL KEVIN SEBEL,

Petitioner.

OAH No. 2011020267

DECISION

This matter was heard by a quorum of the Board of Vocational Nursing and Psychiatric Technicians (Board) on February 24, 2011, in Los Angeles. Eric Sawyer, Administrative Law Judge, Office of Administrative Hearings, State of California, presided. The record was closed and the matter was submitted for decision, following which the Board met in an executive session and decided the matter after the hearing.

Michael Kevin Sebel (Petitioner) appeared and represented himself.

Geoffrey Ward, Deputy Attorney General, represented the Attorney General of the State of California pursuant to Business and Professions Code section 2878.7.

FACTUAL FINDINGS

1. On May 31, 1994, the Board issued Vocational Nurse License No. VN 167633 to Petitioner.

2A. The Board adopted a Stipulated Settlement and Disciplinary Order (Board Case No. 6722), in which Petitioner's license was revoked, effective July 10, 2005. No costs award was included in the order.

2B. In the stipulation, Petitioner admitted committing the following acts of unprofessional conduct and dishonesty. On February 7, 2004, while employed as a vocational nurse at a hospital, Petitioner diverted two vials of Demerol. He failed to account for the Demerol in hospital records. In March of 2004, Petitioner admitted that he had been diverting Demerol for several weeks and self-administering it.

3. The petition for reinstatement was filed with the Board on October 6, 2010; it is timely and meets all jurisdictional requirements.

4. There is no evidence that Petitioner has committed any subsequent acts which would be violations of the pertinent laws related to the Board's licensees or which would be considered grounds for denial of an application for a license.

5. Petitioner has remained gainfully employed in the transportation industry since the revocation of his license, mainly as a bus driver. He remains married and has demonstrated a stable personal life.

6. Petitioner's date of sobriety is June 2, 2004. He completed a chemical dependency program in 2004, and attended Narcotics Anonymous meetings until 2006. He stopped attending meetings because he felt his situation had stabilized. He no longer has contact with a sponsor. As a bus driver, he must take random drug tests, which he believes provides an incentive to remain sober. He also believes his positive work and family environments provide him with a good support network.

LEGAL CONCLUSIONS

1. *Burden of Proof.* The burden in this petition for reinstatement of a revoked license rests with Petitioner. (*Flanzer v. Board of Dental Examiners* (1990) 220 Cal.App.3d 1392, 1398.) The standard of proof is clear and convincing evidence to a reasonable certainty. (*Hippard v. State Bar* (1989) 49 Cal.3d 1084.)

2. *Standard of Review.* Business and Professions Code section 2878.7 provides the Board with authority to reinstate a revoked license for reasons the Board deems sufficient. In doing so, the Board may impose reasonable conditions. (Bus. & Prof. Code, § 2878.7, subd. (d).)

3. *Disposition.* In this case, Petitioner failed to meet his burden of establishing clearly and convincingly that cause exists to reinstate his license pursuant to Business and Professions Code section 2878.7. Petitioner no longer attends narcotics group meetings or has contact with a sponsor, which is of concern to the Board. There was insufficient evidence that he has developed a sufficient support group on his own. Petitioner submitted no character reference letters attesting to his sobriety specifically, or his character generally. Nor has he tried to stay current in the vocational nursing field through continuing education courses. Although Petitioner is making encouraging progress in his personal life, overall he failed to demonstrate a satisfactory level of rehabilitation. (Factual Findings 1-6.)

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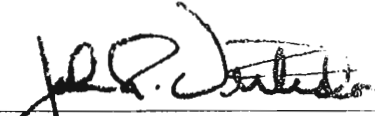
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ORDER

The petition for reinstatement of Michael Kevin Sebel is denied.

This Decision shall be effective May 17, 2011.

Dated: May 2, 2011



John Vertido, L.V.N.,
President, California Board of Vocational
Nursing and Psychiatric Technicians